

Assembly Bill No. 2423

Passed the Assembly August 15, 2002

Chief Clerk of the Assembly

Passed the Senate August 12, 2002

Secretary of the Senate

This bill was received by the Governor this _____ day of
_____, 2002, at _____ o'clock __M.

Private Secretary of the Governor

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CHAPTER _____

An act to add Chapter 3.5 (commencing with Section 120260) to Part 1 of, and to repeal Chapter 10.5 (commencing with Section 121130) of Part 4 of, Division 105 of, the Health and Safety Code, relating to health.

LEGISLATIVE COUNSEL'S DIGEST

AB 2423, Cardenas. Health: exposure to communicable diseases: first responders.

Existing law provides that the blood or other potentially infectious material of a person receiving health care services that has been the source of a significant exposure to an individual may be tested and the exposed individual may be informed of the HIV status of that patient if certain conditions are met. Existing law provides that if this source patient refuses to consent to an HIV test after a documented effort has been made to obtain consent, then any “available blood or patient sample,” as defined, of the source patient may be tested. Existing law prohibits the disclosure of the source patient’s identity.

Existing law exempts a health care provider from civil or criminal liability or professional disciplinary action for performing an HIV test on a source patient, or for disclosing the HIV status of the source patient to prescribed persons, if the health care provider believes in good faith that his or her action is consistent with these provisions.

Existing law provides that any health care provider or first responder, or any exposed individual, who willfully performs or permits the performance of an HIV test on a source patient, that results in harm, without adhering to the procedure established by the bill, is guilty of a misdemeanor.

This bill would provide that these provisions apply to a communicable disease.

This bill would change the definition of “available blood or patient sample” for purposes of these and related provisions to refer to blood or other material that was legally obtained from the source patient prior to the release of the patient from the health care facility.



This bill would define “communicable disease” to mean any disease that was transferable through the exposure incident, as determined by the certifying physician.

By expanding the scope of a crime this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. Chapter 3.5 (commencing with Section 120260) is added to Part 1 of Division 105 of the Health and Safety Code, to read:

CHAPTER 3.5. COMMUNICABLE DISEASES EXPOSURE
NOTIFICATION ACT

120260. (a) The Legislature finds and declares all of the following:

(1) Early knowledge of infection with communicable disease is important in order to permit exposed persons to make informed health care decisions as well as to take measures to reduce the likelihood of transmitting the infection to others.

(2) Individual health care providers, agents and employees of health care facilities and individual health care providers, and first responders, including police, firefighters, rescue personnel, and other persons who provide the first response to emergencies, frequently come into contact with the blood and other potentially infectious materials of individuals whose communicable disease infection status is not known.

(3) Even if these exposed individuals use universal infection control precautions to prevent transmission of communicable diseases, there will be occasions when they experience significant exposure to the blood or other potentially infectious materials of patients.



(b) Therefore, it is the intent of the Legislature to provide a narrow exposure notification and information mechanism to permit individual health care providers, the employees or contracted agents of health care facilities and individual health care providers, and first responders, who have experienced a significant exposure to the blood or other potentially infectious materials of a patient, to learn of the communicable disease infection status of the patient.

120261. For the purposes of this chapter, the following definitions apply:

(a) “Attending physician of the source patient” means any physician and surgeon licensed pursuant to Chapter 5 (commencing with Section 2000) of Division 2 of the Business and Professions Code and any person licensed pursuant to the Osteopathic Initiative Act, who provides health care services to the source patient. Notwithstanding any other provision of this subdivision to the contrary, the attending physician of the source patient shall include any of the following persons:

(1) The private physician of the source patient.

(2) The physician primarily responsible for the patient who is undergoing inpatient treatment in a hospital.

(3) A registered nurse or licensed nurse practitioner who has been designated by the attending physician of the source patient.

(b) “Available blood or patient sample” means blood or other tissue or material that was legally obtained in the course of providing health care services, and is in the possession of the physician or other health care provider of the source patient prior to the release of the source patient from the physician’s or health care provider’s facility.

(c) “Certifying physician” means any physician consulted by the exposed individual for the exposure incident. A certifying physician shall have demonstrated competency and understanding of the then applicable guidelines or standards of the Division of Occupational Safety and Health.

(d) “Communicable disease” means any disease that was transferable through the exposure incident, as determined by the certifying physician.

(e) “Exposed individual” means any individual health care provider, first responder, or any other person, including, but not limited to, any employee, volunteer, or contracted agent of any



health care provider, who is exposed, within the scope of his or her employment, to the blood or other potentially infectious materials of a source patient.

(f) “Health care provider” means any person licensed or certified pursuant to Division 2 (commencing with Section 500) of the Business and Professions Code, any person licensed pursuant to the Osteopathic Initiative Act or the Chiropractic Initiative Act, any person certified pursuant to Division 2.5 (commencing with Section 1797), any clinic, health dispensary, or health facility licensed or exempt from licensure pursuant to Division 2 (commencing with Section 1200), any employee, volunteer, or contracted agent of any group practice prepayment health care service plan regulated pursuant to the Knox-Keene Health Care Service Plan Act of 1975 (Chapter 2.2 (commencing with Section 1340) of Division 2), and any professional student of one of the clinics, health dispensaries, or health care facilities or health care providers described in this subdivision.

(g) “First responder” means a police officer, firefighter, rescue worker, or any other person who provides emergency response, first aid care, or other medically related assistance either in the course of the person’s occupational duties or as a volunteer.

(h) “Other potentially infectious materials” means those body fluids identified by the Division of Occupational Safety and Health as potentially capable of transmitting a communicable disease.

(i) “Significant exposure” means direct contact with blood or other potentially infectious materials of a patient in a manner that, according to the then applicable guidelines of the Division of Occupational Safety and Health, is capable of transmitting a communicable disease.

(j) “Source patient” means any person receiving health care services whose blood or other potentially infectious material has been the source of a significant exposure to an exposed individual.

120262. Notwithstanding Chapter 7 (commencing with Section 120975) or any other provision of law, the blood or other tissue or material of a source patient may be tested, and an exposed individual may be informed whether the patient has tested positive or negative for a communicable disease if the exposed individual and the health care facility, if any, have substantially complied with the then applicable guidelines of the Division of Occupational



Safety and Health and the State Department of Health Services and if the following procedure is followed:

(a) (1) Whenever a person becomes an exposed individual by experiencing an exposure to the blood or other potentially infectious material of a patient during the course of rendering health care-related services or occupational services, the exposed individual may request an evaluation of the exposure by a physician to determine if it is a significant exposure, as defined in subdivision (h) of Section 120261. No physician or other exposed individual shall certify his or her own significant exposure. However, an employing physician may certify the exposure of one of his or her employees. Requests for certification shall be made in writing within 72 hours of the exposure.

(2) A written certification by a physician of the significance of the exposure shall be obtained within 72 hours of the request. The certification shall include the nature and extent of the exposure.

(b) (1) The exposed individual shall be counseled regarding the likelihood of transmission, the limitations of the testing performed, the need for followup testing, and the procedures that the exposed individual must follow regardless of whether the source patient has tested positive or negative for a communicable disease. The exposed individual may be tested in accordance with the then applicable guidelines or standards of the Division of Occupational Safety and Health. The result of this test shall be confirmed as negative before available blood or other patient samples of the source patient may be tested for evidence of infection to a communicable disease, without the consent of the source patient pursuant to subdivision (d).

(2) Within 72 hours of certifying the exposure as significant, the certifying physician shall provide written certification to an attending physician of the source patient that a significant exposure to an exposed individual has occurred, and shall request information on whether the source patient has tested positive or negative for a communicable disease, and the availability of blood or other patient samples. An attending physician shall respond to the request for information within three working days.

(c) If test results of the source patient are already known to be positive for a communicable disease then, except as provided in subdivisions (b) and (c) of Section 121010, when the exposed individual is a health care provider or an employee or agent of the



health care provider of the source patient, an attending physician and surgeon of the source patient shall attempt to obtain the consent of the source patient to disclose to the exposed the testing results of the source patient regarding communicable diseases. If the source patient cannot be contacted or refuses to consent to the disclosure, then the exposed individual may be informed of the test results regarding communicable diseases of the source patient by an attending physician of the source patient as soon as possible after the exposure has been certified as significant, notwithstanding Section 120980 or any other provision of law.

(d) If the communicable disease status of the source patient is unknown to the certifying physician or an attending physician, if blood or other patient samples are available, and if the exposed individual has tested negative on a baseline test for communicable diseases, the source patient shall be given the opportunity to give informed consent to a test for communicable diseases in accordance with the following:

(1) Within 72 hours after receiving a written certification of significant exposure, an attending physician of the source patient shall do all of the following:

(A) Make a good faith effort to notify the source patient or the authorized legal representative of the source patient about the significant exposure. A good faith effort to notify includes, but is not limited to, a documented attempt to locate the source patient by telephone or by first-class mail with a certificate of mailing. An attempt to locate the source patient and the results of that attempt shall be documented in the medical record of the source patient. An inability to contact the source patient, or legal representative of the source patient, after a good faith effort to do so as provided in this subdivision, shall constitute a refusal of consent pursuant to paragraph (2). An inability of the source patient to provide informed consent shall constitute a refusal of consent pursuant to paragraph (2), provided all of the following conditions are met:

- (i) The source patient has no authorized legal representative.
- (ii) The source patient is incapable of giving consent.
- (iii) In the opinion of the attending physician, it is likely that the source patient will be unable to grant informed consent within the 72-hour period during which the physician is required to respond pursuant to paragraph (1).



(B) Attempt to obtain the voluntary informed consent of the source patient or the authorized legal representative of the source patient to perform a test for a communicable disease, on the source patient or on any available blood or patient sample of the source patient. The voluntary informed consent shall be in writing. The source patient shall have the option not to be informed of the test result. An exposed individual shall be prohibited from attempting to obtain directly informed consent for testing for communicable diseases from the source patient.

(C) Provide the source patient with medically appropriate pretest counseling and refer the source patient to appropriate posttest counseling and followup, if necessary. The source patient shall be offered medically appropriate counseling whether or not he or she consents to testing.

(2) If the source patient or the authorized legal representative of the source patient refuses to consent to test for a communicable disease after a documented effort has been made to obtain consent, any available blood or patient sample of the source patient may be tested. The source patient or authorized legal representative of the source patient shall be informed that an available blood sample or other tissue or material will be tested despite his or her refusal, and that the exposed individual shall be informed of the test results regarding communicable diseases.

(3) If the informed consent of the source patient cannot be obtained because the source patient is deceased, consent to perform a test for a communicable disease on any blood or patient sample of the source patient legally obtained in the course of providing health care services at the time of the exposure event shall be deemed granted.

(4) A source patient or the authorized legal representative of a source patient shall be advised that he or she shall be informed of the results of the test for communicable diseases only if he or she wishes to be so informed. If a patient refuses to provide informed consent to testing for communicable diseases and refuses to learn the results of the testing, he or she shall sign a form documenting this refusal. The source patient's refusal to sign this form shall be construed to be a refusal to be informed of the test results regarding communicable diseases. Test results for communicable diseases shall only be placed in the medical record when the patient has agreed in writing to be informed of the results.



(5) Notwithstanding any other provision of law, if the source patient or authorized legal representative of a source patient refuses to be informed of the results of the test, the test results regarding communicable diseases of that source patient shall only be provided to the exposed individual in accordance with the then applicable regulations established by the Division of Occupational Safety and Health.

(6) The source patient's identity shall be encoded on the communicable disease test result record.

(e) If an exposed individual is informed of the status of a source patient with regard to a communicable disease pursuant to this section, the exposed individual shall be informed that he or she is subject to existing confidentiality protections for any identifying information about the communicable disease test results, and that medical information regarding the communicable disease status of the source patient shall be kept confidential and may not be further disclosed, except as otherwise authorized by law. The exposed individual shall be informed of the penalties for which he or she would be personally liable for violation of Section 120980.

(f) The costs for the test and counseling for communicable diseases of the exposed individual, or the source patient, or both, shall be borne by the employer of the exposed individual, if any. An employer who directs and controls the exposed individual shall provide the postexposure evaluation and followup required by the California Division of Occupational Safety and Health as well as the testing and counseling for source patients required under this chapter. If an exposed individual is a volunteer or a student, then the health care provider or first responder that assigned a task to the volunteer or student may pay for the costs of testing and counseling as if that volunteer or student were an employee. If an exposed individual, who is not an employee of a health facility or of another health care provider, chooses to obtain postexposure evaluation or followup counseling, or both, or treatment, he or she shall be financially responsible for the costs thereof and shall be responsible for the costs of the testing and counseling for the source patient.

(g) Nothing in this section authorizes the disclosure of the source patient's identity.



(h) Nothing in this section shall authorize a health care provider to draw blood or other body fluids except as otherwise authorized by law.

(i) The provisions of this section are cumulative only and shall not preclude testing of source patients for a communicable disease, as authorized by any other provision of law.

(j) Except as otherwise provided under this section, all confidentiality requirements regarding medical records that are provided for under existing law apply to this section.

121140. (a) No health care provider, as defined in this chapter, shall be subject to civil or criminal liability or professional disciplinary action for performing tests for a communicable disease on the available blood or patient sample of a source patient, or for disclosing the communicable disease status of a source patient to the source patient, an attending physician of the source patient, the certifying physician, the exposed individual, or any attending physician of the exposed individual, if the health care provider has acted in good faith in complying with this chapter.

(b) Any health care provider or first responder, or any exposed individual, who willfully performs or permits the performance of a test for a communicable disease on a source patient, that results in economic, bodily, or psychological harm to the source patient, without adhering to the procedure set forth in this chapter is guilty of a misdemeanor, punishable by imprisonment in the county jail for a period not to exceed one year, or a fine not to exceed ten thousand dollars (\$10,000), or by both.

SEC. 2. Chapter 10.5 (commencing with Section 121130) of Part 4 of Division 105 of the Health and Safety Code is repealed.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.



Approved _____, 2002

Governor

